THOMAS S. ARNOLD

IBLA 86-345 May 14, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing a protest of a notice of unacceptable filing.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Estoppel

BLM may properly declare simultaneous oil and gas lease applications unacceptable and return the filing fees and first year's rentals, minus a $ 75 processing fee for each Part B application form, where the applicant failed to submit separate remittances in payment of the filing fees and first year's rentals with each Part B application, notwithstanding written advice from BLM that a single remittance would be acceptable.

APPEARANCES: Thomas S. Arnold, Jacksonville, Florida, pro se; Lyle K. Rising, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Thomas S. Arnold has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 3, 1986, dismissing his protest of BLM's finding that oil and gas lease applications filed by appellant were unacceptable. The applications at issue are two in number, and each was submitted to BLM during the October 1985 simultaneous filing period for oil and gas leases. Appellant's applications were found to be unacceptable because appellant had submitted only one remittance, but had filed two applications. 1/

Upon receipt of BLM's notice of December 5, 1985, finding his applications unacceptable, Arnold filed a protest contending that his applications were in accordance with regulation 43 CFR 3112.2-2 and a certain instruction release distributed by the New Mexico State Office, BLM. 2/ Arnold also

1/ Automated Simultaneous Oil and Gas Notice of Unacceptable Filing or Overpayment of Fees, dated Dec. 5, 1985.

2/ Arnold's "protest" was not, in fact, a protest under 43 CFR 4.450-2 since under that regulation a protest is any objection to any action proposed to be

argued that a single remittance was consistent with the reduction in paperwork that the automated simultaneous system was designed to effect. On appeal, Arnold reiterates these arguments. On May 29, 1986, counsel for BLM filed a motion to dismiss this appeal because appellant failed to resubmit his filing fees and first year's rental with this notice of appeal as required by 43 CFR 3112.3(h).

Examination of 43 CFR 3112.2-2 refutes Arnold's first argument that a single remittance may properly accompany multiple applications. That regulation reads:

> `Each Part B application form shall, when filed, be accompanied by a single remittance. The remittance shall consist of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $ 75 and the first year's rental payment. Failure to submit either a separate remittance for each Part B application form or an amount sufficient to cover all the parcels on each Part B application form, or both, shall cause the entire filing to be deemed unacceptable.

In Thomas & Nancy Wieker, 92 IBLA 107 (1986), the Board held that this regulation clearly provides that each application 3/ must be submitted with a single remittance and that failure to do so will cause the entire filing to be deemed unacceptable. Appellant does not specify how any other interpretation of this regulation is plausible.

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fn. 2 (continued)
taken by BLM. In this case the notice stated, "Your application (copy enclosed) is deemed unacceptable in accordance with the regulation in 43 CFR 3112.3." That regulation states at 43 CFR 3112.3(g) that "the return of an unacceptable application shall be considered a final Departmental action." Clearly, the regulation contemplates appeals from such action because the same subsection states that "[a]ny appeal" shall not delay issuance of the lease. See Shaw Resources, Inc., 79 IBLA 153, 171, 91 I.D. 122, 132 (1984).

The notice did not provide the right of appeal to this Board. It did state that if there were any questions the BLM Wyoming State Office Simultaneous Unit should be contacted at a certain telephone number. To avoid confusion regarding the protest and appeal distinction, and to adhere to the procedure contemplated by the regulations, BLM should include in its future notices the standard appeals paragraph.

3/ The Part B application that Wieker speaks of lists parcels, by State prefix and parcel number, for which an applicant in the automated simultaneous oil and gas leasing program may apply. On the reverse of this form is the following advice: "A separate remittance for the total amount specified on this Part B must accompany this Part B." A single Part B application may not be used to apply for parcels in more than one state. Part A contains the name, address, and identification number of the applicant. For a complete description of the forms and simultaneous leasing program, see Shaw Resources, Inc., supra.

The instruction release that appellant refers to in his second argument is an undated, four-page newsletter on BLM New Mexico State office letterhead. This release states in part:

> RECOMMENDATIONS FOR FILING AUTOMATED FORMS
>
> FILING FEES/ADVANCE RENTAL: One check can be submitted to cover all parcels selected. NOTE: Each parcel selection must be accompanied by the 1st years advance rental at $ 1.00 per acre or fraction thereof. Be certain that the fees submitted correspond with the number of parcels selected and their respective 1st years advance rental. If filing for parcels in more than one state, a single check covering all parcels selected can be sent. The filing fee per parcel is $ 75.00. [Emphasis added.]

The underscored language above was clearly incorrect for multiple applications filed after the effective date of 43 CFR 3112.2-2, July 30, 1984. 4/ As noted above, appellant filed his applications during the October 1985 filing period.

In his second argument, Arnold, in effect, asks that BLM be estopped to deny the guidance provided by the New Mexico State Office in its undated release. To estop BLM in the instant case would permit appellant to file his applications in a manner denied to all other applicants at that time. Moreover, such filing would be directly contrary to regulation 43 CFR 3112.2-2, a duly promulgated regulation having the force and effect of law. See Altex Oil Corp., 61 IBLA 270 (1982). This Board has consistently held that reliance on erroneous or incomplete information by BLM employees cannot create rights not authorized by law. See Raymond T. Duncan, 96 IBLA 352 (1987); Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 373 (1981).

Regulation 43 CFR 1810.3(c) offers further support for the BLM decision on appeal. That regulation states: "Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law." Although it is clear that the New Mexico State Office release was incorrect, the above-cited case law and regulatory authority preclude BLM from granting appellant the right to file his applications in a manner contrary to the terms of 43 CFR 3112.2-2. Accordingly, BLM's decision must be affirmed in this respect.

Arnold's third argument that a single remittance is consistent with the paperwork reduction effected by the automated simultaneous program is ably answered by BLM in the decision on appeal, and we set forth BLM's response in toto:

> This regulation [43 CFR 3112.2-2] was intended to reduce the number of applications that are disqualified for insufficient fees. The Bureau of Land Management's previous experience showed

4/ Prior to this effective date, the regulation was silent as to the need for a separate remittance for each Part B application. See 43 CFR 3112.2-2 (1983).

> that a mistake of a few dollars in the remittance submitted with a large group of applications resulted in the disqualification of inordinately large numbers of those applications. The new requirement to submit the first year's rental at the time the application is filed increases both the applicant's margin for error and the likelihood that applications would be disqualified for errors in remittances submitted. With the submission of a single remittance per Part B form, the applicant's opportunity to win priorities in all states in which he/she applies is not jeopardized by an error in the remittance submitted with any individual application. The regulation was also intended to speed processing. We must assure that every application is accompanied by sufficient fees. The advance rental requirement has made reconciliation and identification of errors much more difficult than in the past. Requiring separate remittances results in more efficient error identification and processing. This in turn allows us to complete the entire processing cycle, including posting of results and refund of advance rentals, more quickly.

Appellant's argument is not without merit and would have been an appropriate suggestion during the comment period prior to final rulemaking of 43 CFR 3112.2-2. The Department, however, has taken a different view, and that viewpoint is expressed at 43 CFR 3112.2-2 requiring a separate remittance for each Part B application form. Because a duly promulgated regulation is binding on the Secretary, Altex Oil Corp., supra, BLM properly rejected this argument in its January 3, 1986, decision, and we must do also on appeal. 5/

Finally, we note that in BLM's notice of December 5, 1985, appellant's remittance is listed as $ 1,287 and the amount to be refunded is $ 1,087. However, in its January 3, 1986, decision, BLM states the remittance is $ 1,237. If the $ 1,237 amount is correct, the remittance of $ 1,087 appears to be in accord with 43 CFR 3112.3(b). Unfortunately, based on the record provided to this Board, we are not able to verify the correct remittance. Therefore, BLM is directed to verify the correct remittance.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed as modified.

John H. Kelly
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

5/ Our holding herein makes unnecessary a ruling on BLM's motion to dismiss the instant appeal.